the instruction passed as part of the Labor Committee bill seriously in regard to these international agreements. We need to see them demonstrate a greater willingness to recognize the standards used in other countries. As I have stated many times, the Food and Drug Administration in this country does not have a corner on the ability to regulate well.

These are the sort of FDA reforms that I believe will promote a more efficient, higher quality regulatory process at the Food and Drug Administration. I look forward to revisiting these issues, and all of the other aspects of FDA reform, early in the 105th Congress. ●

## REACH–BACK TAX RELIEF

● Mr. CONRAD. Mr. President, I am pleased to join Senator COCHRAN in sponsoring this reach-back tax relief bill, S. 2135, to alleviate some of the unintended and inequitable hardships inflicted on certain companies by the Coal Industry Retiree Health Benefits Act of 1992. Our bill would provide substantial relief to numerous small companies. It would also use a small portion of the existing surplus of more than $120 million in the combined health benefit fund created by the act to allow a 2-year moratorium on the reach-back premiums. This 2-year period will give the Congress adequate time to study the current operations of the act and to remedy the inequities of the current law.

In the past, I have said that the Coal Act produced several major achievements. First, it assured retired coal miners and their dependents that their health benefits were permanently secure. The act provided a statutory foundation to carry out the commitment of all of us to see that these benefits are paid. It also provided a necessary legal mechanism to transfer excess pension funds into the health funds. In addition, the act required certain cost-containment measures that greatly increased the cost effectiveness of retirees' health benefit programs.

Despite its significant accomplishments, one feature of the Coal Act—its reach-back funding mechanism—has engendered great hardship and controversy. Many companies, who long ago had withdrawn from the Bituminous Coal Operators Association [BCOA] believing that they had met all of their legal obligations to fund retiree health benefits, found themselves, in 1992, subject to a draconian reach-back premium tax that they could not have foreseen and for which they could not have planned. This retroactive tax enforced by the full power of the Internal Revenue Service and the threat of dramatically compounding penalties has produced severe hardship for many companies subject to it. Some of them are trying to pay it by depleting their assets and hence their ability to generate income. Others have tried to ignore it and are now being subjected to collection suits by the Combined Fund.

The 102d Congress was persuaded that the Bituminous Coal Operators Association could no longer afford to fund retired miners' health benefits on a current basis as it had for the previous 25 years. The Congress was told that miner's health benefits faced a crisis of skyrocketing costs that would bankrupt the miners' benefits fund if the Congress did not act. The Congress was given a choice of either an industry-wide tax or the reach-back tax to fund health benefits. The passage of the Coal Act saves members of the BCOA more than $100 million a year over its prior annual benefit payments.

Fortunately the skyrocketing costs predicted by the BCOA have simply not occurred. The cost containment measures contained in the act and the decline in population of retirees and dependents served by the fund are largely offsetting the inflation in health care costs. Thus, the reach-back tax is simply injuring companies who cannot afford to pay it while giving members of the BCOA a windfall benefit which they do not want to give up.

Mr. President, the problems being caused by the reach-back tax are just beginning. Many original supporters of the Coal Act recognize that it needs some fine tuning. The Cochran-Conrad bill would provide for a GAO study of current operations and a 2-year respite from the reach-back tax, while assuring that the overriding goal of providing health care benefits of retired miners is preserved. I hope that my colleagues on the Senate Finance Committee will give this legislation the early consideration it deserves in the new Congress.●

## AUTHORIZING HUD TO REGULATE PROPERTY INSURANCE PRACTICES

● Mr. GRASSLEY. Mr. President, the Department of Housing and Urban Development [HUD] is aggressively pursuing regulation of property insurance practices, supposedly because of the Federal Fair Housing Act [FHA]. HUD takes the position that the FHA, which prohibits discrimination in housing on the basis of race, sex, national origin, and other similar factors, authorizes HUD to regulate property insurance practices that purportedly affect the availability of housing. I strongly disagree with this interpretation by the FHA. I do not believe that HUD has the authority to regulate the insurance industry, let alone have any recognizable expertise in this area.

HUD's insurance-related activities are directly contrary to the longstanding position of Congress that the States should be primarily responsible for regulating insurance. In the McCarran-Ferguson Act of 1945, Congress expressly provided that, unless a Federal law specifically relates to the business of insurance, that law shall not interfere with State insurance regulation. The FHA, while expressly governing home sales and rentals and the services that home sellers, landlords, mortgage lenders, and real estate brokers provide, makes no mention whatsoever of the service of providing property insurance. Moreover, a review of the legislative history shows that Congress specifically chose not to include the sale or underwriting of insurance within the purview of the FHA.

HUD's assertion of authority regarding property insurance is a major threat to State insurance regulation. In August 1994, HUD announced that it was undertaking a new rulemaking that would prescribe use of the disparate impact theory in determining property insurer's compliance with the FHA. Although HUD has stalled on the promulgation of such disparate impact rules, it remains firm in its position that the disparate impact test applies under the FHA, and that the FHA applies to insurance.

Under the disparate impact theory, statistics showing that a practice has a disparate impact on a particular protected group may suffice to establish a prima facie case of discrimination, without any showing of discriminatory intent. The use of this theory may be appropriate in certain contexts, but in the area of insurance, it is wholly inappropriate and, in fact, potentially harmful.

The disparate impact theory assumes unlawful discrimination based solely on statistical data. Thus, under a disparate impact approach, statistics showing differences in insurance coverages by geographic area, wholly attributable to different risks in those areas, could be assumed to reflect racial bias merely because of a correlation between race and geographical locations.

The application of the disparate impact test to property insurance practices could undermine the ability of State regulators to ensure, as they are required by law to do, that the companies under their jurisdiction remain solvent. If insurers accept loss exposures to protect themselves against charges of disparate impact, or if they classify risky loss exposures as lower-risk exposures for this purpose, they may incur financial problems, because premiums collected may be far lower than the amount needed to cover losses incurred, and policy holders' surplus will have to be used to pay claims. If an insurer engages frequently in such improper underwriting, its surplus can be drained to the point of insolvency.

It is precisely for the purpose of preventing insolvencies while providing a means to make insurance more available that the States have adopted Fair Access to Insurance Requirements [FAIR] plans. HUD's disparate impact approach is flatly inconsistent with these congressionally authorized plans. Generally, the FAIR plans make property insurance available to applicants who have been rejected by the voluntary insurance market so that higher risks may be allocated equitably among insurers operating in a State. The FAIR plans thus help to prevent